

CROWN EMPLOYEES (COURT OFFICERS ATTORNEY GENERAL'S DEPARTMENT) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act* 1996.

(No. IRC 4554 of 2004)

Before The Honourable Mr Deputy President Harrison

28 February 2005

REVIEWED AWARD

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2. Definitions

"Court Officer" means all persons employed as such in the Office of the Sheriff of New South Wales, the District Court of New South Wales and the Supreme Court of New South Wales by the New South Wales Attorney General's Department or any administrative unit of New South Wales as Determined by the Director General of the New South Wales Attorney General's Department, whether on a full-time, Part-time or casual basis.

"Department" means the New South Wales Attorney General's Department.

"PEO" means Public Employment Office.

"Union" means Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales.

"Week" means Monday to Friday inclusive.

3. Transitional Arrangements

- (i) A Court Officer who, as at 31 October, 2001 had worked at least 35 hours per week for 40 weeks or more in the preceding twelve months and any other person identified by agreement between the parties as entitled to be treated as a Full-time Court Officer, will be offered employment as a Full-Time Court

Officer as a temporary employee within the meaning of section 31 of the *Public Sector Employment and Management Act 2002*.

- (ii) A Court Officer who, as at 31 October, 2001 has worked regular and fixed hours on the same number of days each week but less than thirty-five hours a week for at least 40 weeks in the preceding 12 months, and any other person identified by agreement between the parties as entitled to be treated as a Part-time Court Officer will be offered employment as a Part-time Court Officer as a temporary employee within the meaning of section 31 of the *Public Sector Employment and Management Act 2002*.
- (iii) At the making of this Award, employees who meet the criteria for Full-time or Part-time Court Officer positions will be identified, listed and offered available full-time or part-time positions. If accepted they will be employed pursuant to the *Public Sector Employment and Management Act 2002*. If an employee rejects a position, s/he will be removed from the list.
- (iv) The employment of Court Officers who become temporary Full-time or Part-time Court Officers pursuant to this Award under the transitional arrangements will be subject to the sufficiency of work at the Court Officer's current location or any other court location within reasonable distance to which the Court Officer may be prepared to move. Any dispute about any question of the sufficiency of work will be dealt with pursuant to Clause 11 of this Award.
- (vi) The Department undertakes that section 31 of the *Public Sector Employment and Management Act 2002* will not be applied to those employees who become Full-time or Part-time Court Officers in such a way as to bring to an end their employment while there remains useful court work and associated duties for them to perform.
- (vii) Full-time and Part-time Court Officers may be assigned to any court within reasonable travelling distance as required and may be required to undertake work in and out of court, consistent with the duties currently undertaken by court officers.

4. Salaries

- (i) The salaries in this Award will be adjusted in accordance with the Crown Employees (Public Sector - Salaries 2004) Award.
- (ii) The salary payable to a Court Officer shall be as follows:

Classification	Grade	Year	Salary
Court Officer	Grade 1	1st year	\$31,352
Court Officer	Grade 1	2nd year	\$32,790

- (iii) Casual Court Officers shall be paid on the basis of an hourly rate equivalent to 1/38 of the applicable weekly salary, which is calculated by dividing the annual salary rate by 52, together with a loading of 15%.

5. Skill Development and Training

The Department will assist Court Officers to maintain standards by making training available from time to time on a needs basis in relation to court practices and protocol.

6. Hours of Work

Standard hours of work for Full-time Court Officers are 38 hours per week subject to local arrangements as to the contract hours at the workplace level. The current local arrangement of 35 hours per week in the Supreme Court will be continued as a local arrangement.

The Department may require a staff member to perform duties beyond the hours determined under this clause but only if it is reasonable for the staff member to do so. A staff member may refuse to work additional hours in circumstances where the working of such hours would result in the staff member working unreasonable hours. In determining what is unreasonable the following factors shall be taken into account:

- (a) the staff member's prior commitments outside the workplace, particularly the staff member's family and carer responsibilities, community obligations or study arrangements;
- (b) any risk to staff member health and safety;
- (c) the urgency of the work required to be performed during additional hours, the impact on the operational commitments of the organisation and the effect on client services;
- (d) the notice (if any) given by the Authority regarding the working of the additional hours, and by the staff member of their intention to refuse the working of additional hours; or
- (e) any other relevant matter.

7. Flexible Working Hours Scheme

The Department's Flexible Working Hours Scheme will apply to Full-Time and Part-time Court Officers but not casual Court Officers. It is acknowledged that in settling working hours for employees covered by this Award, those employees must be available to attend in court during court hours.

8. Overtime

All Court Officers, whether employed on a Full-Time, Part-time or Casual basis who are directed to work overtime pursuant to Clause 92(a) of the Crown Employees (Public Service Conditions of Employment 2002) Award shall be paid overtime in accordance with Clause 94 of the Crown Employees (Public Service Conditions of Employment 2002) Award.

A staff member may be directed by the Department to work overtime, provided it is reasonable for the staff member to be required to do so. A staff member may refuse to work overtime in circumstances where the working hours of such overtime would result in the staff member working unreasonable hours. In determining what is unreasonable, the following factors shall be taken into account:

- (a) the staff member's prior commitments outside the workplace, particularly the staff member's family and carer responsibilities, community obligations or study arrangements;
- (b) any risk to staff the member's health and safety;
- (c) the urgency of the work required to be performed during overtime, the impact on the operational commitments of the organisation and the effect on client services;
- (d) the notice (if any) given by the Authority regarding the working of the overtime, and by the staff member of their intention to refuse overtime; or
- (f) any other relevant matter.

9. Leave

Full-Time and Part-time Court Officers but not casual Court Officers shall be paid leave in accordance with clause 70 to 88 inclusive of the Crown Employees (Public Service Conditions of Employment 2002) Award. Leave entitlements will be rostered to coincide with court vacations to the extent it is possible to do so.

10. Displaced Employees

In the event that the Department decides to appoint permanent officers, and the effect of such appointments is to displace any Full-time or Part-time Court Officer, such employees will be managed pursuant to the Managing Displaced Employees Policy.

11. Deduction of Union Membership Fees

- (i) The Association shall provide the employer with a schedule setting out Association membership fees payable by members of the Association in accordance with the Association's rules.
- (ii) The Association shall advise the Authority of any change to the amount of membership fees made under its rules. Any variation to the schedule of Association membership fees payable shall be provided to the Authority at least once a month in advance of the variation taking place.
- (iii) Subject to (i) and (ii) above, the Authority shall deduct Association membership fees from the salary of any officer who is a member of the Association in accordance with the Association's rules, provided that the officer has authorised the Authority to make such deductions.
- (iv) Monies so deducted from officers' salary shall be forwarded regularly to the Association together with all necessary information to enable the Association to reconcile the and credit subscriptions to officers' Association membership accounts.

12. Relationship to Other Awards

This award shall be reviewed in light of any variation to the Crown Employees (Public Service Conditions of Employment) Award 2002, or an award replacing it, in so far as it may affect clauses referred to in this award.

Where there may be inconsistencies between this award and the Crown Employees (Public Service Conditions of Employment) Award 2002, the arrangements in this award shall prevail.

13. Grievance Procedure

- (i) All grievances and disputes relating to the provisions of this award shall initially be dealt with as close to the source as possible, with graduated steps for further attempts at resolution at higher levels of authority within the Department, if required.
- (ii) A Court Officer is required to notify in writing their immediate manager, as to the substance of the grievance, dispute or difficulty, request a meeting to discuss the matter, and if possible, state the remedy sought.
- (iii) The immediate manager shall convene a meeting in order to resolve the grievance, dispute or difficulty within two (2) working days, or as soon as practicable, of the matter being brought to attention.
- (iv) If the matter remains unresolved with the immediate manager, the Court Officer may request to meet the appropriate person at the next level of management in order to resolve the matter. This manager shall respond within two (2) working days, or as soon as practicable. This sequence of reference to successive levels of management may be pursued by the Court Officer until the matter is referred to the Department.
- (v) The Department may refer the matter to the PEO for consideration.
- (vi) If the matter remains unresolved, the Department shall provide a written response to the Court Officer and any other party involved in the grievance, dispute or difficulty, concerning action to be taken, or the reason for not taking action, in relation to the matter.
- (vii) A Court Officer, at any stage, may request to be represented by the Union.

- (viii) The Court Officer or the Union on their behalf, or the Department may refer the matter to the New South Wales Industrial Relations Commission if the matter is unresolved following the use of these procedures.
- (ix) The Court Officer, Union, Department and PEO shall agree to be bound by any order or determination by the New South Wales Industrial Relations Commission in relation to the dispute.
- (x) Whilst the procedures outlined in subclauses (i) to (ix) of this clause are being followed, normal work undertaken prior to notification of the dispute or difficulty shall continue unless otherwise agreed between the parties, or, in the case involving occupational health and safety, if practicable, normal work shall proceed in a manner which avoids any risk to the health and safety of any Court Officer or member of the public
- (xi) Where the grievance or dispute involves confidential or other sensitive material (including issues of harassment or discrimination under the *Anti-Discrimination Act 1977*) that make it impractical for the staff member to advise their immediate manager, the notification may occur to the next appropriate level of management, including where required, to the Departmental Head or Delegate.
- (xii) The immediate manager, or other appropriate officer, shall convene a meeting in order to resolve the grievance, dispute or difficulty within two (2) working days, or as soon as practicable, of the matter being brought to attention.

14. Anti-Discrimination

It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.

It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award, which, by its terms or operation, has a direct or indirect discriminatory effect.

- (1) Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (2) Nothing in this clause is to be taken to affect:
 - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
 - (b) offering or providing junior rates of pay to person under 21 years of age;
 - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
 - (d) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- (3) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

NOTES

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.

(b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in this Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

15. Area, Incidence and Duration

This Award shall apply to all persons employed as Court Officers in the Office of the Sheriff of New South Wales, the District Court of New South Wales, the Supreme Court of New South Wales, the Land and Environment Court of New South Wales in the New South Wales Attorney General's Department or in any administrative unit of New South Wales as determined by the Director General of the New South Wales Attorney General's Department. It shall have effect from the first pay period on or after 28 November 2001 and shall remain in force for a period of three years from the date of commencement.

This Award is made following a review under section 19 of the *Industrial Relations Act 1996* and rescinds and replaces the Crown Employees (Court Officers Attorney General's Department) Award published 9 August 2002 (335 I.G. 751).

The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act 1996* and Principles 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 IG) 359 take effect on and from 28 February 2005.

The award remains in force until varied or rescinded, the period for which it was made having already expired.

R. W. HARRISON *D.P.*

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